

### REMARKS

Claims 1-8, 11-28, 31-41, and 44-49 are pending in the present application. Claims 9, 10, 29, 30, 42, and 43 are canceled. Claims 1-8, 11-21, 31, 32, 34, 38, 39, 41, 44, 45, 48, and 49 are amended. Claims 1, 21, and 41 are amended to include limitations originally presented in claims 9, 10, 29, 30, 42, and 43. Reconsideration of the claims is respectfully requested.

#### **I. Claim Objections**

The Office Action objects to claim 45 as being of improper independent form. Claim 45 is amended to properly depend from claim 41. Therefore, Applicants respectfully request withdrawal of the objection to claim 45.

#### **II. 35 U.S.C. § 101**

The Office Action rejects claims 1-19 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. Claims 1-19 are amended to recite to more clearly recite steps that are performed within the technological arts, as recommended by the Examiner. Therefore, Applicants respectfully request withdrawal of the rejection of claims 1-19 under 35 U.S.C. § 101.

#### **III. 35 U.S.C. § 103, Obviousness**

The Office Action rejects claims 1-9, 12-29, 32-42, 44, and 46-49 under 35 U.S.C. § 103 as being unpatentable over *Macready et al.* (U.S. Pub. No. 2002/0016759). Independent claims 1, 21, and 41 are amended to include limitations originally presented in claims 9, 10, 29, 30, 42, and 43.

The Office Action rejects claims 10-11, 30-31, and 43 under 35 U.S.C. § 103 as being unpatentable over *Macready et al.*, as applied to claims 1, 9, 21, 29-31, 41, and 42 above, in view of Kansal (U.S. Patent No. 6,647,374). This rejection is respectfully traversed.

*Macready* teaches methods and system for discovery of trades between parties. A negotiation space is defined by the utility functions of a buyer and the capabilities of a seller. See *Macready*, paragraphs [0015]-[0018]. The buyer's utility function defines the buyer's willingness to buy a product or service over the negotiation space. See *Macready*, paragraphs [0019]-[0022]. A seller's capabilities define the ability of the seller to deliver the product or

service within the negotiation space. See *Macready*, paragraphs [0032]-[0034]. *Macready* also teaches a tool for maximizing the buyer's utility, subject to the seller's capabilities, to find a trade that makes the buyer as happy as possible, and for optimizing across suppliers to rank them according to utility at the optimal point. See *Macready*, paragraphs [0037]-[0039].

In contradistinction, the present invention provides a method, computer program product, and apparatus for making selling decisions for selling a product or service. The invention recited in claim 1, for example, automatically provides a initial offer of sale of a product or service to a customer, obtains history information regarding the product or service, determines acceptable terms of sale based on the history information, and automatically negotiates terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, one or more rules, and one or more attributes of the product or service. *Macready* does not teach or fairly suggest such a negotiation.

More particularly, with respect to original claims 10 and 11, the Office Action acknowledges that *Macready* does not disclose obtaining history information regarding the product or service and determining acceptable terms of sale based on the history information. The Office Action alleges these features are taught by *Kansal*. Applicants respectfully disagree. *Kansal* teaches a system and method of assessing and rating vendor risk and pricing of technology delivery insurance. *Kansal* teaches rating vendors based on past performance. A customer wishing to procure services from a vendor may buy an insurance policy that protects against non-timely performance of a contract. The insurance premium is priced according to the rating system. See *Kansal*, col. 3, lines 39-51; col. 4, lines 11-41.

*Kansal* also teaches that a nominal bid submitted to a customer by a vendor may be adjusted using the vendor's two-way rating to provide a risk adjustment factor. See *Kansal*, col. 4, lines 46-53. Thus, the rating is used to add a risk adjustment factor or insurance against non-timely performance; however, *Kansal* does not teach or suggest determining acceptable terms of sale for a product or service based on the history information and automatically negotiating terms of sale of the product or service based on the initial offer of sale, the acceptable terms of sale based on the history information, one or more rules, and one or more attributes of the product or service, as recited in claim 1, for example. The risk adjustment factor of *Kansal* applies to all bids submitted by a given vendor and has no effect whatsoever on the acceptable terms of sale for a vendor or the negotiation of the terms of sale with a customer. Rather, the risk adjustment factor and insurance against non-timely performance of *Kansal* are separate and distinct from the terms

of sale in the bid that are acceptable to the vendor.

Neither *Macready* nor *Kansal* teaches or suggests negotiating terms of sale based on acceptable terms of sale determined based on history information. Thus, *Macready* and *Kansal*, taken individually or in combination, fail to teach or suggest each and every limitation of claim 1, for example. Independent claims 21 and 41 recite subject matter addressed above with respect to claim 1 and are allowable for similar reasons. Since claims 2-8, 11-20, 22-28, 31-40, and 44-47 depend from claims 1, 21, and 41, the same distinctions between *Macready* and *Kansal* and the invention recited in claims 1, 21, and 41 apply for these claims. In addition, claims 2-8, 11-20, 22-28, 31-40, and 44-47 recite additional combinations of features not taught or suggested by the references.

Therefore, Applicants respectfully request withdrawal of the rejection of claims 1-8, 11-28, 31-41, and 44-47 under 35 U.S.C. § 103.

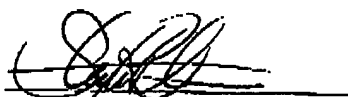
#### IV. Conclusion

It is respectfully urged that the subject application is patentable over the prior art of record and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,



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